

HOUSE BILL REPORT

E2SHB 1812

As Passed Legislature

Title: An act relating to modernizing the energy facility site evaluation council to meet the state's clean energy goals.

Brief Description: Modernizing the energy facility site evaluation council to meet the state's clean energy goals.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Wylie, Berry, Valdez, Pollet and Harris-Talley; by request of Office of the Governor).

Brief History:

Committee Activity:

Environment & Energy: 1/21/22, 1/25/22, 2/3/22 [DPS];
Appropriations: 2/7/22 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 2/13/22, 95-3.
Senate Amended.
Passed Senate: 3/3/22, 29-20.
House Concurred.
Passed House: 3/7/22, 92-6.
Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Establishes the Energy Facility Site Evaluation Council (EFSEC) as an independent agency separate from the Utilities and Transportation Commission.
- Creates an Account for EFSEC-related expenditures and deposits.
- Authorizes clean energy product manufacturing facilities, storage facilities, renewable natural gas facilities, and renewable or green electrolytic hydrogen facilities to opt into the EFSEC siting process.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Adds requirements for notifying and consulting with federally recognized tribes.
- Adds a public comment period and other engagement requirements to the EFSEC site application review process.
- Clarifies authorities to the EFSEC, including ongoing regulatory oversight.
- Directs the Department of Commerce to conduct rural stakeholder meetings and complete interim and final reports, by December 1, 2022, and December 1, 2023, to include recommendations for how to more equitably distribute costs and benefits of energy projects to rural communities.
- Directs the legislative Joint Committee on Energy Supply and Energy Conservation to review several issues, including inequities where large alternative energy projects have been and are forecast to be sited, and report findings and any recommendations by December 1, 2023.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Megan McPhaden (786-7114).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Corry, Assistant Ranking Minority Member.

Staff: Dan Jones (786-7118).

Background:

Intent for Energy Facility Site Locations.

The policy of Washington regarding energy facility site locations includes references to:

- recognizing a need for additional energy facilities in Washington;
- ensuring that the location and operation of these facilities will produce minimal adverse effects on the environment; and
- acting to balance increasing demands for energy facilities with the broad interests of the public.

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the applicant and EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The Utilities and Transportation Commission (UTC) provides all administrative and staff support for the EFSEC. The UTC has supervisory authority over the staff of the EFSEC. The EFSEC otherwise retains its independence in exercising its powers, functions, and duties and its supervisory control over non-administrative staff support.

The Governor, with the advice and consent of the Senate, appoints the EFSEC Chair (Chair). The Chair or the Chair's designee executes all official documents, contracts, and other materials on behalf of the EFSEC. Along with the Chair, the permanent membership of the EFSEC consists of the directors, administrators, or their designees, of the following:

- the Department of Ecology;
- the Department of Fish and Wildlife;
- the Department of Commerce;
- the UTC; and
- the Department of Natural Resources.

The directors, administrators, or their designees, of the following may participate as EFSEC members in a specific site certification proceeding at their own discretion, provided they elect to participate no later than 60 days after an application is filed:

- the Department of Agriculture;
- the Department of Health;
- the Washington State Military Department; and
- the Department of Transportation.

The legislative authority of every county and city in which an application for a proposed site is filed must appoint a member or designee as a voting member to the EFSEC. Any port district in which an application for a proposed port facility is filed must appoint a member or designee as a nonvoting member to the EFSEC. However, if the port district is an applicant for a port facility, the port may not appoint a member or designee to the EFSEC for review of that application. For cities, counties, and port districts, the appointed member or designee only sits with the EFSEC from the time the proposed site is considered until there is a final acceptance or rejection of the proposed site.

Among the EFSEC's enumerated powers are the authorities to:

- develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities;
- conduct or contract studies of sites proposed for certification;
- conduct public hearings on the proposed location of energy facilities;
- issue required permits, including permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act; and
- preempt local regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

The State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead governmental agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS). The lead agency is responsible for complying with SEPA's procedural requirements, including making a threshold determination and preparing the EIS when one is required.

Under SEPA rules adopted by the Department of Ecology (Ecology), the EFSEC is the lead agency for all government actions for energy facilities that require certification under

EFSEC's siting laws and the EFSEC manager is responsible for coordinating activities to comply with the SEPA.

Energy Facilities Covered Under Energy Facility Site Evaluation Council Siting Laws.

The laws that provide for a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. For example, the EFSEC has siting authority over energy facilities including nuclear power plants of any size, thermal electric power plants with a generating capacity of 350 megawatts or greater, and other facilities that meet specified capacity thresholds to receive, store, process, or produce various energy types. Energy facilities of any size that exclusively use alternative energy resources such as wind or solar energy may opt into the EFSEC review and certification process. The EFSEC's jurisdiction does not extend to hydropower facilities or facilities operated by and for the armed services or by other federal authority for national defense.

Electrical transmission facilities are covered under the EFSEC siting process if:

- the facility is located in a national interest electric transmission corridor; or
- an applicant chooses to receive certification, and
 - the facilities are of a nominal voltage in excess of 115,000 volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities, and the facilities are located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or
 - the facilities are of a nominal voltage in excess of 115,000 volts, and the facilities are located outside an electrical transmission corridor identified in either of the bullet points directly above.

Study of Potential Sites.

Upon the request of a potential applicant, the EFSEC may conduct a preliminary study of any potential site prior to receiving an application for site certification. After the EFSEC receives a request to study a potential site, it must commission an independent consultant to conduct the study, which must include an analysis of environmental impact information. The applicant must pay a fee of \$10,000 toward the cost of the study. If the study costs more, the applicant must give approval prior to paying more than \$10,000, and if the study costs less, unexpended funds are returned to the applicant. The EFSEC may cooperate with local government entities where the potential site is located, as well as federal and state agencies, and interested municipal and public corporations.

This preliminary EFSEC study may be used in place of the EIS that is required by other branches of government under SEPA.

Public Hearings.

In reviewing an application for site certification, the EFSEC must hold three sequential

public hearings:

- an informational hearing;
- a land use and zoning ordinance hearing. If it is determined that the proposed site isn't in conformance with local planning ordinances, the local jurisdiction may not then change the land use plans or zoning ordinances to affect the proposed site; and
- a public hearing conducted as an adjudicative proceeding prior to the issuance of a certification recommendation to the Governor. Anyone may speak at this meeting.

Expedited Processing of Applications.

A person may apply to the EFSEC for expedited processing of their application for certification of an energy facility or alternative energy resource facility. The EFSEC may grant expedited processing if it finds that: (1) the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level under SEPA review; and (2) the project is in compliance with local land use plans or zoning ordinances.

If an application for a project's certification is granted expedited processing, the EFSEC is not required to: (1) commission an independent study to further measure the consequences of the proposed facility on the environment; or (2) hold an adjudicative proceeding on the application.

Payments to the Utilities and Transportation Commission on Behalf of the Energy Facility Site Evaluation Council.

On behalf of the EFSEC, the UTC must receive deposits and reimbursements from preapplicants, applicants, and certificate holders:

- for preapplicants, a deposit of \$10,000, to be applied to the cost of the preapplication process;
- for applicants, a deposit up to \$50,000, or a greater amount specified by the EFSEC after consulting with the applicant. Payment is for the EFSEC's costs of reviewing the application and for an independent evaluation of the site if the EFSEC deems that to be necessary; and
- for certificate holders, a deposit up to \$50,000, or a greater amount specified by the EFSEC after consulting with the certificate holder. Payment is for the EFSEC's costs of inspection and monitoring compliance.

The receipts from all applicants must be credited to the State General Fund and only spent by the EFSEC for authorized purposes.

Clean Fuels Program.

Ecology is directed to adopt a rule establishing a Clean Fuels Program (CFP) limiting the greenhouse gas (GHG) emissions attributable to each unit of transportation fuel (carbon intensity) to 20 percent below 2017 levels by 2038. The rule adopted by Ecology to implement the CFP must include standards for assigning levels of GHG emissions attributable to transportation fuels based on a lifecycle analysis that considers emissions from the production, storage, transportation, and combustion of the fuels, and associated

changes in land use. Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitute.

Joint Committee on Energy Supply and Energy Conservation.

The Joint Committee on Energy Supply and Energy Conservation (Joint Committee) reviews plans proposed by the Governor for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy supply alert or energy emergency, and makes recommendations back to the Governor for review. The Joint Committee either approves or disapproves any request from the Governor regarding a declaration of a condition of energy emergency. The Joint Committee also receives information related to the state or regional energy supply situation. The Joint Committee meets at the following times: at least once per year or at anytime upon the call of the Chair to receive information related to the state or regional energy supply situation; during a condition of energy supply alert or emergency; and upon the call of the Chair, in response to gubernatorial action to terminate such a condition.

Summary of Engrossed Second Substitute Bill:

Intent for Energy Facility Site Locations.

The policy of Washington regarding energy facility site locations adds reference to:

- reducing dependence on fossil fuels and conducting a transparent and inclusive public process with particular attention to overburdened communities;
- streamlining application review of energy facilities to meet Washington's energy goals;
- authorizing certain clean energy product manufacturing facilities to be considered; and
- encouraging meaningful public comment and participation decisions.

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) is established as a stand-alone entity of state government, and is no longer housed within the Utilities and Transportation Commission (UTC). The transfer of EFSEC-related authority from the UTC to the new EFSEC agency includes all administrative powers, duties, and functions of the UTC that are performed for the EFSEC, and employees that carry out these responsibilities, along with all related materials and property. All financial assets held by the UTC and appropriations made to the UTC for the benefit of the EFSEC must be transferred to a new EFSEC account created to carry out the EFSEC siting laws. All pending business and existing contracts and obligations must continue to be performed by the EFSEC.

The EFSEC Chair (Chair) must appoint a director to oversee operations and carry out responsibilities for energy facility siting. The director must employ administrative staff. The director, personal secretary to the director, council chair, and not more than two professional staff are exempted from the Civil Service Law. The Chair may delegate its council appointing authority to the director.

Along with the Chair, the permanent membership of the EFSEC consists of:

- the Director of the Department of Ecology or a designee;
- the Director of the Department of Fish and Wildlife or a designee;
- the Director of the Department of Commerce or a designee;
- the Chair of the UTC or a designee; and
- the Commissioner of Public Lands or a designee.

For the EFSEC's 12-month reporting requirement to the Governor to apply, an application must be deemed complete by the director.

The EFSEC's draft certification agreement that is submitted to the Governor with a recommendation of approval must also include conditions to protect overburdened communities affected by the construction or operation of the facility.

A quorum of the EFSEC consists of a majority of members appointed for business to be conducted.

The EFSEC's authorities are amended to clarify that the EFSEC may:

- develop and apply guidelines for ongoing regulatory oversight;
- enter into contracts, not limited to study contracts, to carry out its responsibilities; and
- conduct hearings not only on the proposed location of the energy facilities but also on the operational conditions.

Energy Facilities Covered Under Energy Facility Site Evaluation Council Siting Laws.
Clean Energy Product Manufacturing Facilities.

A person proposing to construct, reconstruct, or enlarge a clean energy product manufacturing facility may choose to receive certification under EFSEC's energy facility siting laws. The authorities that apply to energy facilities apply to clean energy product manufacturing facilities.

Clean energy product manufacturing facilities exclusively or primarily manufacture the following products or components primarily used by such products:

- vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor;
- charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor;
- renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock, or converting it to a green hydrogen carrier;
- equipment and products used to produce energy from alternative energy resources; and
- equipment and products used at storage facilities.

Other Facilities That May Opt In.

In addition to clean energy product manufacturing facilities, storage facilities, all types of renewable natural gas facilities, and renewable and green electrolytic hydrogen energy facilities may also opt into the EFSEC's processes:

- Storage facilities are plants that: (1) accept electricity as an energy source and use a chemical, thermal, mechanical or other process to store energy for subsequent delivery or consumption in the form of electricity; or (2) store renewable hydrogen, green electrolytic hydrogen, or a green hydrogen carrier for subsequent delivery or consumption.
- Renewable natural gas is a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.
- Renewable hydrogen is hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.
- Green electrolytic hydrogen is hydrogen produced through electrolysis. It does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.
- Green hydrogen carrier is a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

Additionally, all refined biofuel facilities that produce less than 25,000 barrels a day may now opt-into the EFSEC's processes, not just those that produce between 1,500 and 25,000 barrels a day.

Electrical Transmission Facilities.

For an electrical transmission facility that an applicant is choosing to receive certification for, previous requirements are removed so that the only requirements are that this facility must be: (1) of a nominal voltage or at least 115,000 volts; and (2) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances.

The preapplicant fee of \$10,000 now only applies to electrical transmission facilities.

Study of Potential Projects.

The EFSEC may conduct a preliminary study of a potential project if an applicant and EFSEC agree that EFSEC do so, rather than only if the applicant requests the study. The EFSEC is no longer required to, but still may, commission an independent consultant to study the potential project. This preliminary study is before any State Environmental Policy Act (SEPA) environmental review process begins, and is not required to include an analysis of environmental impact information. Tribal entities are added to the entities that the EFSEC may cooperate and work with while conducting the preliminary study. If an applicant submits a formal application for the proposed site that was studied, the applicant's

payments for the preliminary study may be considered as payment toward the application fee. The preliminary EFSEC study may no longer be used in place of the Environmental Impact Statement required under SEPA.

Except for the siting of electrical transmission facilities, applicants may request a preapplication review of a proposed project, and council staff must provide comments on any additional studies and stakeholder and tribal input that should be included in the application. After this initial review, the EFSEC staff may conduct or contract a further review and consultation if the applicant pays fees that are agreed upon by the director and the applicant.

Engagement with Local Legislative Authorities and Federally Recognized Tribes.

When an application is received, the Chair must notify: (1) the city and county legislative authorities where the proposed facility is located; (2) the federally recognized tribal governments affected by the proposed facility; and (3) the Department of Archaeology and Historic Preservation. The Department of Archaeology and Historic Preservation must coordinate with affected federally recognized tribes and with the applicant. The EFSEC must work with local governments where a project is proposed to be sited, and with all federally recognized tribes affected by a proposed facility, to provide for participation and input during siting review and compliance monitoring.

Energy Facility Site Evaluation Council staff must inform affected federally recognized tribes of a project undergoing preapplication review. The Chair and staff must offer to conduct government-to-government consultation to address issues of concern raised by any tribe. The Chair must provide regular updates on the consultation to the EFSEC during the application review process. A summary of the government-to-government consultation process, including issues and proposed resolutions, must be included in the EFSEC reports to the Governor that recommend approving or rejecting an application for certification. This summary must comply with the Public Records Act to exempt records, maps, and other information related to archaeological and certain tribal sites from public reporting.

Public Hearings and Public Comments.

Local jurisdictions are no longer prohibited from changing their plans or ordinances after the land use and zoning ordinance hearing if the proposed site did not conform. Instead, the EFSEC must determine whether the proposal is consistent with local land use and zoning ordinances on the date of the application.

There must be a public comment period prior to the start of the final public hearing that is conducted as an adjudicative proceeding. During the final public hearing, anyone may raise one or more specific issues but only as long as they raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

Additionally, the EFSEC may limit the adjudicative proceeding to whether any local land

use plans or zoning ordinances that are inconsistent with the proposed site, as determined in the previous hearing, should be preempted. The EFSEC may only limit the final public hearing in this way if the SEPA review determines that the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level.

The EFSEC must review and consider comments received during the application process in making its recommendation to the Governor.

The director of the EFSEC must provide an opportunity for public comment on a SEPA determination of nonsignificance or mitigated nonsignificance at the end of a process where a project applicant withdraws and revises an application to avoid a determination of significance on the originally submitted application.

Expedited Processing of Applications.

An applicant may apply for expedited processing for any facility covered under the EFSEC's siting laws, not only energy facilities and alternative energy resource facilities. After expedited processing is granted and before providing a recommendation to the Governor, the EFSEC must hold a public meeting to take comments on the proposed application.

Payments to the Energy Facility Site Evaluation Council Account.

The EFSEC Account is created in the state treasury. This is a non-appropriated account that is subject to allotment procedures. All payments, including fees, deposits, and reimbursements, received by the EFSEC from preapplicants, applicants, and certificate holders, must be deposited into this account, instead of to the State General Fund. Only the Chair or the Chair's designee may authorize expenditures from the EFSEC Account. Expenditures may be used to carry out EFSEC siting laws.

Stakeholder Consultation and Report on Rural Clean Energy and Resilience.

The Department of Commerce (Commerce) must conduct at least three stakeholder meetings, with at least one in eastern Washington and at least one in western Washington. These stakeholder meetings must be held with rural, agriculture, natural resource management and conservation, and forestry stakeholders to gain a better understanding of the benefits and impacts of anticipated changes in the state's energy system, including the siting of facilities under the jurisdiction of the EFSEC, and to identify risks and opportunities for rural communities.

Commerce must then complete a report on Rural Clean Energy and Resilience, which must consider the stakeholder consultation and must include recommendations for how to more equitably distribute costs and benefits to rural communities. The report must specifically examine the impacts of energy projects in rural areas to jobs, local tax revenue, agriculture, and tourism, and it must forecast what Washington's clean energy transition will require for energy projects in rural Washington. The report must also include relevant information from the existing least-conflict priority solar siting pilot project in the Columbia basin. An

interim report is due December 1, 2022, and a final report is due December 1, 2023, to the EFSEC, the Legislature, and the Joint Committee on Energy Supply, Energy Conservation, and Energy Resiliency.

Joint Committee on Energy Supply, Energy Conservation, and Energy Resiliency.

The existing Joint Committee on Energy Supply, Energy Conservation, and Energy Resiliency (Committee) must review: (1) inequities in where large alternative energy projects have been and are forecasted to be sited; (2) Commerce's report on Rural Clean Energy and Resilience; and (3) economic development assistance, mitigation payments, and viewshed impairment payments that counties not hosting their per capita share of alternative energy resources should provide to counties that host more than their per capita share.

The Committee includes two members from each of the two largest caucuses of the Senate, two members from each of the two largest caucuses of the House of Representatives, and alternates from each caucus of each chamber.

The requirements for the Committee include that the Committee must hold at least four meetings before June 30, 2024, with at least two in eastern Washington. There are two co-chairs from each caucus and one must preside over the western Washington meetings while the other must preside over the eastern Washington meetings. The first meeting must occur by September 30, 2022. The Committee must report its findings and any recommendations to the EFSEC and the Legislature by December 1, 2023.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on June 30, 2022. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Facilities need to be sited inside the state to meet Washington's clean energy goals and for Washington to come into compliance with and implement its own laws. The current process facilitates none of the goals expressed in the bill. This is an important step to transition to the green energy economy and it will be a powerful tool to create green and family-wage and high-wage jobs in the state. This separates the Energy Facility Site Evaluation Council (EFSEC) from the Utilities and Transportation Commission (UTC) which will make it more efficient and effective. The bill modernizes the EFSEC and makes it more inclusive. The bill expands requirements for engaging with tribes, increases transparency, and formalizes some consultation that the EFSEC already does. Concerns can be addressed at the beginning of the process which will prevent delays. The preapplication process is improved so issues are raised early. There is appreciation for the "raise or waive" provision in section 9. Raising issues earlier supports good projects and weeds out bad

projects earlier in the process. There is increased demand in the EFSEC process. This will bring clean energy product manufacturing facilities, which are gaining interest in the EFSEC one-stop process, to the state. There is support for the broad definition of clean energy product manufacturing facilities to incorporate these supply chain products. This will streamline the permitting process for alternative energy projects. When there are local county zoning ordinances that effectively prohibit solar and wind projects, this can be costly for a project under development, and the only way a project can move forward is with the EFSEC. The definition of alternative energy resource is good, as is the inclusion of energy storage facilities and renewable and green electrolytic hydrogen. This can help Washington be more competitive for recent federal funding for hydrogen hubs. There was a very thorough stakeholder process, and the outreach during bill development is appreciated. There are some suggested improvements to the bill, such as improvements to the storage definition, ensuring adequate public process, adding a preadjudication meeting with public comment, and allowing the public comments in the raise or waive provision, and clarifying language that the manufacturing of products doesn't add harm to overburdened communities. The Legislature should consider how to incorporate results from the shrubsteppe conservation strategy and Washington State University's least conflict solar siting process into clearer siting criteria for solar and potentially other energy facilities.

(Opposed) The EFSEC process should not be extended to clean energy manufacturing facilities, which are factories. This is a broad expansion of authority to override local decisions on planning and zoning. Local governments are capable of siting factories without the Governor overriding mandated local planning. This is not needed. The changes to the hearing process will be harmful to many of Washington's counties.

(Other) Thank you for including tribes in the EFSEC process. There are concerns with the term "ancestral lands" because it is not defined in state law, so there should either be a clear definition, or this should be replaced with another term that is defined. Another concern is regarding pipeline projects that are hundreds of miles long. With these projects, every city and county could request to be part of the EFSEC process, which creates an equity situation with tribes because only two can participate. Tribes' cultural sacred places and natural resources shouldn't be put at risk in the name of streamlining and expedited review. Some tribes are unaware of a project's impacts until a permit is filed. As there may be years of work before a permit is filed, there needs to be a requirement that state agencies coordinate with tribes as soon as they are aware of the project before permits are filed with the EFSEC. The bill needs to address the confidentiality of sensitive cultural information. One tribe can't participate for another tribe. Tribes have a voice in local matters and concerns from tribal nations should be addressed. The EFSEC process is supported but there should be a clear, early, and substantive process to solicit and consider public comment. Sections 9 and 10 should have clear authority for soliciting and then considering public comment. The EFSEC should be a venue for clean energy facilities, but the definitions need to be right. Creating the EFSEC as a separate agency would not be helpful. Local governments can site these projects without the help of the EFSEC. Delays in permitting is a longstanding issue for the business community, so the focus on expedited processing is good, but expedited

processing should be open to all projects. Washington needs to make it easier and faster and more attractive to site projects in the state without sacrificing environmental protections. While the language to keep projects moving forward in section 9 is beneficial, section 10 does the opposite and there should be more specificity on what makes an application complete. The EFSEC's authority should end after the siting and the EFSEC shouldn't have ongoing regulatory oversight.

Staff Summary of Public Testimony (Appropriations):

(In support) Increasing certainty and predictability in the energy facility permit approval process will allow for energy infrastructure to be built in a timely manner. The Legislature has enacted several major climate bills in recent years, and the goals of those bills won't be achieved without additional clean energy infrastructure. This bill modernizes the Energy Facility Site Evaluation Council. Duplication and overlap between agency administrative duties would be reduced. This bill would lead to increases in private business investments and expand the state economy without reducing environmental oversight.

(Opposed) None.

Persons Testifying (Environment & Energy): (In support) Representative Joe Fitzgibbon, prime sponsor; Michael Garrity, Department of Fish and Wildlife; Michael Bridges, Longview Kelso Building and Construction Trades Council; Isaac Kastama, Clean and Prosperous Washington; Joe Kendo, Washington State Labor Council, AFL-CIO; Justin Allegro, The Nature Conservancy; Matt Steuerwalt, Nextera Energy Resources; Mark Riker, Washington State Building and Construction Trades Council; Cassandra Macy, Innergex Renewable Development LLC; Christina Bayanian, Sheet Metal Workers Local 66; Jeff Gombosky, Renewable Northwest; Matthew Hepner, International Brotherhood of Electrical Workers and Certified Electrical Workers of Washington; Kelly Hall, Climate Solutions; Becky Kelley, Office of the Governor; Kathleen Drew, Energy Facility Site Evaluation Council; and Brian Young, Department of Commerce Office of Economic Development and Competitiveness.

(Opposed) Paul Jewell, Washington State Association of Counties.

(Other) Daryl Williams, Tulalip Tribes; Peter Godlewski, Association of Washington Business; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; and Dawn Vyvyan, Yakama Nation and Puyallup Tribe.

Persons Testifying (Appropriations): Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Mark Riker, Washington State Building and Construction Trades Council; and Kelly Hall, Climate Solutions.

Persons Signed In To Testify But Not Testifying (Environment & Energy): Nicolas Garcia, Washington Public Utility District Association; and Stephanie Hillman, Sierra Club.

Persons Signed In To Testify But Not Testifying (Appropriations): None.